

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 824

IN THE MATTER OF:

Served June 4, 1968

Application of WMA Transit )  
Company for Amendment of )  
Certificate of Public )  
Convenience and Necessity )  
No. 8. )

Application No. 425

Application of D. C. Transit )  
System, Inc., for Authority )  
to Add its New Route C-2 )  
Within the District of Colum- )  
bia. )

Application No. 462

Application of D. C. Transit )  
System, Inc., for Amendment )  
of Certificate of Public )  
Convenience and Necessity )  
No. 5. )

Application No. 463

Docket No. 160

APPEARANCES:

STANLEY H. KAMEROW and DAVID S. GREENE, attorneys for  
WMA Transit Company.

MANUEL J. DAVIS and SAMUEL M. LANGERMAN, attorneys for  
D. C. Transit System, Inc.

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tions of the District of Columbia.

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politan Area Transit Commission.

On March 25, 1966, this Commission issued Order No. 581 in  
which it found, after notice and hearing, that the public interest  
required A. B. & W. Transit Company and WMA Transit Company to

extend their routes so as to provide bus service to the 18th and L Streets, N. W. area (Farragut Square) of Washington, D. C. The Commission also found that the existing certificates of those carriers authorized the service extensions ordered therein. The service extensions required by Order No. 581 were initiated in May and June of 1966. D. C. Transit System, Inc., ("D. C. Transit"), a protestant, sought judicial review.

On March 7, 1967, the United States Court of Appeals for the District of Columbia Circuit entered its opinion and order setting aside Order No. 581. The Court of Appeals held that before authorizing the route extensions here in question, we should have complied with certain statutory provisions of the Compact. However, that Court stayed the issuance of its mandate pending appeal by the Commission to the United States Supreme Court.

Soon after the Court's decision, WMA Transit Company ("WMA") filed an application to amend its Certificate of Public Convenience and Necessity No. 8, to authorize the extension of its routes from the terminal at 11th Street and Pennsylvania Avenue, N. W., Washington, D. C. to Farragut Square. The Commission deferred processing the application until the conclusion of the litigation. A Commission petition for a Writ of Certiorari was denied by the Supreme Court on October 9, 1967.

Filed concurrently with the application for permanent authority was an application for temporary authority to engage in the transportation sought to be authorized.

On October 24, 1967, the Commission issued Order No. 751, in which it (a) set for hearing the application of WMA Transit Company for an amendment of its certificate of public convenience and necessity which would authorize it to provide a through-bus service from the suburban areas of Maryland served by that carrier to Farragut Square in the District of Columbia, and (b) granted WMA Transit Company temporary authority to perform such transportation pending determination of the application for permanent authority.

D. C. Transit sought a stay of that Order from the Court of Appeals. As an outgrowth of that litigation, WMA and D. C. Transit entered into an agreement providing for the continuation of the service pending the Commission's consideration of the WMA application.

Upon request, the Commission accepted the agreement as the basis for continuing the service during the interim period, in lieu of the temporary authority it had issued. Consequently, by Order No. 761 we cancelled Order No. 751.

Before hearing could commence on the WMA application, D. C. Transit filed two competing applications for operating authority; as the latter in essence duplicated in part the WMA application and as the applications would be mutually exclusive, the Supreme Court's Ashbacker Doctrine required a consolidated hearing and decision. Accordingly, the applications were jointly heard commencing January 29, 1968, by one or more Commissioners.

Application No. 425 was filed by WMA Transit Company, and set out routes extended out from 11th and Pennsylvania Avenue, N. W. to Connecticut Avenue and Eye Street, N. W., covering its regular service via the Pennsylvania Avenue corridor. This application also provided for routing buses using the New York Avenue corridor from New York Avenue and L Street, N. W. to Connecticut Avenue and Eye Street, N. W.

Application No. 462 asked for authority for D. C. Transit to run a new Pennsylvania Avenue express route intra-D. C. between Southern Avenue at Pennsylvania Avenue, S. E. and Farragut Square.

Application No. 463 proposed a series of new D. C. Transit routes travelling interstate between Farragut Square and the Penn Mar Shopping Center in Forestville, Maryland, and between Farragut Square and Suitland, Maryland.

The evidence adduced in the proceeding consists of a transcript of 1,174 pages of the testimony of 63 witnesses and 77 exhibits.

Sixty-one witnesses testified in support of the WMA application, including three company officers and 58 public witnesses. One witness testified in support of the D. C. Transit applications; no member of the public supported them. The Staff of the Commission presented an analysis of the applications by the Chief Engineer.

There was some procedural question as to the Commission's practice of processing extensions of service within the District of Columbia as route authorizations rather than certificate amendments. D. C. Transit specifically questioned WMA's application in this case for a certificate amendment rather than what it thought should be a route authorization request. The procedures followed by the Commission are clear and consistent. All route changes which come within the purview of a carrier's certificate are subject to change by route authorization; all changes which go beyond that purview, naturally, require an amendment on the certificate. In this case, the Court of Appeals had already ruled that a change in WMA's certificate is necessary. It is in light of that ruling that WMA processed its request in this proceeding as a certificate change.

D. C. Transit objected to the fact that WMA had not posted notices in its buses at the time its application was originally filed. D. C. Transit also objected to the fact that it was not served with a copy of WMA's Application No. 425 when it was filed in May, 1967. WMA indeed has failed to comply with the regulations of this Commission pertaining to the above aspects of notice, and it is adjured to exercise care in any future proceedings before this Commission lest it face dismissal of an application. In this case, however, it is clear that both D. C. Transit and the riding public had ample actual notice of this proceeding. D. C. Transit was informed of the application by Commission Order No. 751, issued October 24, 1967; and the application did not come up for public hearing until January 29, 1968. As far as the public was concerned, the presence of fifty-eight members of the public who took time to testify at the public hearings demonstrates broad awareness of the proceeding.

The issues in this proceeding are basically those raised by the application of WMA to extend its routes to the Farragut Square area of the District of Columbia. D. C. Transit also has applications pending for new routes from Farragut Square to certain areas now served by WMA. However, the position taken by D. C. Transit on its own applications makes it clear that the starting point for our analysis must be WMA's proposal to serve the Farragut Square area.

The issues raised by that proposal are, first, those posed by Article XII, § 4 (b) of the Compact. On certain of these issues, there is no dispute. Counsel for D. C. Transit specifically stated at the hearing that D. C. Transit does not dispute

that WMA is "fit, willing and able to perform such transportation properly." Hence, the first question to which we must address ourselves is whether the transportation service in question is "required by the public convenience and necessity."

On this question, the parties are directly at odds. D. C. Transit contends that there is no need for the service to Farragut Square and that it would in fact be detrimental to the public interest while WMA argues that the public convenience and necessity require the service.

Discussion of the facts involved will delineate the issues more clearly. For many years, the terminal location in the District of Columbia for WMA passengers was 11th Street and Pennsylvania Avenue, N.W. This location was convenient to the Federal Triangle and to the traditional downtown areas of Washington. In recent years, an intense development of employment facilities took place in the general area centered upon Farragut Square. Recognizing the change, the Commission in its Order No. 581, issued March 25, 1966, directed WMA to provide direct service to Farragut Square. A new terminal area, serving some but not all of WMA's routes and runs, was established at Connecticut Avenue and H Street, N.W. approximately 1 mile north and west of the 11th Street and Pennsylvania Avenue terminal. There are now about 2,440 people, viz., 4,880 one-way rides, going to and from the Farragut Square location daily on WMA's buses.

D. C. Transit points to the service provided on its routes between WMA's traditional terminal location at 11th Street and Pennsylvania Avenue, N.W., and WMA's Farragut Square terminal. D. C. Transit has 18 separate routes that travel between these general areas although none of them are identical with the WMA routing. Headways on these routes during rush hours range between 40 seconds and 1 1/2 minutes. D. C. Transit offered statistical evidence showing that it had adequate space available for WMA passengers on its buses traveling between the vicinity of 11th Street and Pennsylvania Avenue, N.W. and the vicinity of Farragut Square. According to their figures, a total of 12,066 additional passengers could be accommodated during rush hours. Relying solely on this statistical data concerning routes, schedules, and carrying capacities, D. C. Transit took the position that the WMA passenger would be provided with

adequate service to Farragut Square by means of transfer to D. C. Transit buses at 11th Street and Pennsylvania Avenue, N. W. Hence, argued D. C. Transit, the proposed service was not required by the public convenience and necessity.

WMA took a somewhat different approach to determining public convenience and necessity. They introduced evidence, not only about the routes and schedules available, but about what people want. This evidence took several forms. The results of a survey were introduced. Passengers using the Farragut Square service were asked what they would do if the service were discontinued. Over 55% indicated that they would seek other modes of transportation. WMA also sought out passengers who would be willing to testify at the hearing and provided them with transportation so that they might do so. Forty-six passengers took this means to appear before the Commission and present their views. Overwhelmingly, they were of the view that their use of mass transit stemmed from the availability of through service to Farragut Square on WMA's buses and that transfer service to D. C. Transit at 11th Street and Pennsylvania Avenue, N. W. would not be adequate service. One factor frequently alluded to in the attitudes and opinions expressed by the public witnesses is the fact that WMA service to Farragut Square involved no increase in fare, whereas transfer from a WMA bus to a D. C. Transit bus would involve an additional fare. Similar views were expressed by six witnesses who were employees of the Federal Communications Commission. This group independently sought out the Commission and asked to express their views. The offices of the FCC recently moved to the general vicinity of Farragut Square and the witnesses expressed their strong concern for the continuation of through-bus service to Farragut Square. The FCC itself went on record as favoring the continuation of the service. Finally, bearing upon the question whether the Farragut Square service is required by the public convenience and necessity, is the fact that the service is presently used by almost 2400 persons, making 4800 one-way rides daily.

The question we are considering is whether service by WMA to Farragut Square is required by the public convenience and necessity. We have summarized the evidence presented to us as to the alternative means of providing that service. We find WMA's evidence more convincing. Beyond question, there are thousands of people in WMA's service area who wish to travel

to and from the neighborhood of Farragut Square. D. C. Transit urges that they can make the journey by transferring to its vehicles. We are not convinced that this adequately meets the need.

D. C. Transit's own analysis is open to question. While there is frequent service when all D. C. Transit routes between 11th and Pennsylvania and Farragut Square are viewed as a composite, it is nevertheless true that the passenger must determine to ride a particular route and proceed to the stop for that route. Once there, a measure of delay significant to the passenger may ensue. The figures on carrying capacity may also be viewed in a different light. The figures provided show capacity available in fifteen minute periods. Within that period a given bus might be very crowded while another was not. To the passenger waiting at the stop, the availability of space may not be that which is indicated by D. C. Transit's evidence.

We must take into account passenger attitudes and reactions as shown by WMA's evidence. Both the survey and the testimony of bus riders overwhelmingly demonstrate that through service between residence and work is what is required by the public convenience and necessity. <sup>1/</sup> We are impressed by the fact that over fifty persons would take the time from work to appear before us and testify as to their needs and desires. Their testimony was most convincing on the need for through service. Time and again, they testified that transfer to D. C. Transit buses did not meet their needs or desires. This oral testimony is backed up by a survey of a broad segment of those using the Farragut Square service. This survey indicated that 55% of those now using the service would abandon mass transportation if through service to Farragut Square were eliminated. We regard this survey as valid evidence of opinion of WMA riders generally. In the face of all this evidence, we must conclude that through service to Farragut Square by WMA buses is required by the public convenience and necessity.

It is also relevant to the question of public convenience and necessity to consider the impact of the WMA extension to Farragut Square upon traffic movement on city streets.

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1/ This fact is demonstrated by the profitability of this particular operation for WMA. A WMA witness introduced exhibits contending that new passenger revenue generated by the attractive through service amounted to over \$1500 per weekday, against something less than \$360 per day for the operating cost of extending the service to Farragut Square.

Mr. Daniel J. Hanson, Deputy Executive Vice President of the American Road Builders Association, was kind enough to appear and testify in this case because of his competence and expertise in the specific matter of traffic engineering. He was, for a period of about three years ending January 20, 1968, the Deputy Director for Traffic Engineering and Operations of the District of Columbia Highway Department. The gist of Mr. Hanson's testimony was that he was thoroughly familiar with all aspects of motor vehicle and pedestrian traffic in the Farragut Square area and that, in his opinion, the WMA extension into Farragut Square has reduced and would continue to reduce the total number of vehicles that would otherwise be regularly a part of the traffic pattern.

Another area of relevance in this inquiry was developed by Mr. Paul Foreman, Defense Coordinator for the General Services Administration. Mr. Foreman's testimony concerned the growing number of employees of Federal and District of Columbia agencies located in the immediate vicinity of Farragut Square. He referred to a previously introduced exhibit in this case showing that 4,800 WMA riders per day are destined for Farragut Square. He urged that the WMA service to Farragut Square be maintained, because, in his opinion, it represented an optimum situation.

Our inquiry into public convenience and necessity does not end there, however. We must consider not only the needs and desires of WMA's riders but the impact of this service upon D. C. Transit and its riders. From the viewpoint of rider comfort and convenience, the D. C. Transit rider would, of course, benefit from allowance of WMA's proposal. The area between 11th and Pennsylvania and Farragut Square is the heart of the downtown area, and buses in this vicinity are already heavily used, usually to capacity. Even if D. C. Transit could take the additional 4,800 one-way rides daily, they would be carried on vehicles which are already carrying substantial loads. Hence, if the comfort or convenience of D. C. Transit patrons were considered alone, the answer would be simple; but we must also gauge the financial impact upon D. C. Transit and its riders.



Considerable evidence on this subject was introduced. Passengers who transfer from a WMA bus to a D. C. Transit bus and vice versa obtain the most economical fare by purchasing an interline ticket. On the basis of this fact, WMA estimated the revenue loss to D. C. Transit by analyzing interline ticket revenues. The amount of such revenues in 1965, prior to institution of WMA's Farragut Square service, was determined and was compared with such revenues for a similar period in 1967, after the WMA service was started. This analysis showed that D. C. Transit would lose about \$30,000 in revenues annually as a result of the Farragut Square service. The Commission staff reached a similar conclusion. Charles Overhouse, the Chief Engineer, estimated that D. C. Transit would lose about \$20,000 annually as a result of the proposed WMA service. He based this conclusion on information furnished the Commission by D. C. Transit's Vice President and Comptroller, Mr. Samuel Hatfield. Mr. Hatfield informed the Commission in a letter dated March 10, 1967, that he estimated that D. C. Transit's annual revenues would be reduced by about \$33,000 as a result of the service extensions of both WMA and A. B. & W. Transit Company. Mr. Overhouse computed that the portion of this amount applicable to WMA's route extension was about \$20,000.

In presenting its evidence on financial impact in this proceeding, D. C. Transit took a position radically different from that expressed in Mr. Hatfield's letter. Mr. William E. Bell, another D. C. Transit Vice President, testified that D. C. Transit would lose almost \$277,000 annually as a result of WMA's Farragut Square service. This figure was based on the assumption that every single passenger who now rides WMA buses beyond 11th Street and Pennsylvania Avenue, N. W. would, if WMA's service did not exist, transfer to a D. C. Transit bus. This proposition is patently unacceptable. In the first place, WMA's buses make intermediate stops between 11th and Pennsylvania and Farragut Square. Many of those who now ride WMA beyond 11th and Pennsylvania to the first few stops beyond that point would merely walk the extra distance rather than transfer. Moreover, D. C. Transit's assumption flies in the face of testimony from a large number of bus riding witnesses who expressly denied that they would transfer. Many other riders undoubtedly hold similar views, as evidenced by WMA's survey which showed that, in the absence of through service on WMA, they would abandon public transportation. We conclude that D. C. Transit's

estimate of a \$277,000 annual revenue loss was not a bona fide attempt to gauge the financial impact of WMA's service upon D. C. Transit but rather an effort to maximize the size of the possible loss.

We do have firm evidence of D. C. Transit's actual evaluation of the financial impact upon it of WMA's Farragut Square service. While this matter has been pending before this Commission on remand from the court, WMA has been providing service to Farragut Square pursuant to an interline agreement entered into by WMA and D. C. Transit. Under the terms of that agreement, WMA has agreed to pay D. C. Transit 3.4 cents for each revenue mile operated by WMA on its routes between 11th Street and Pennsylvania Avenue and its Farragut Square terminal. The record here demonstrates that WMA will operate about 88,235 revenue miles annually and thus be liable for an annual payment to D. C. Transit of approximately \$3,000.

While this agreement is presently effective only until this matter is disposed of, D. C. Transit made it perfectly clear on the record of this proceeding that it would be willing to enter into an agreement on the same terms for an indefinite period of time, albeit subject to cancellation or renegotiation after a suitable period of notice. An agreement on the same terms for an indefinite period does exist between D. C. Transit and A. B. & W. Transit Company, covering A. B. & W.'s service to Farragut Square. The mileage run to Farragut Square by A. B. & W. calls for a payment under this agreement of about \$750 annually.

Here, then, is evidence as to the magnitude of the loss it expects to experience as a result of the Farragut Square extension. This is not a projection prepared for purposes of litigation but a determination based on the hard facts of the market place. D. C. Transit is willing to forego the revenues it would otherwise expect from WMA passengers in return for a payment to it of about \$3,000 per year. This is not the actual revenue it would expect from use of its own service, of course. Rather, it reflects the fact that D. C. Transit would incur no cost in receiving this \$3,000 in revenue. D. C. Transit's willingness to settle on these terms clearly indicates that it would not expect a revenue loss of \$277,000 but rather that its revenue loss would be in the \$30,000 range as suggested in Mr. Hatfield's letter to the Commission and as projected in

the testimony submitted by WMA. D. C. Transit's present regular route passenger revenues are approximately \$33,00,000 per year.

We conclude, therefore, that WMA's Farragut Square extension will reduce D. C. Transit's passenger revenues by less than one tenth of one percent. Weighing this negligible revenue loss against the very substantial benefits in improved service to WMA patrons and the slight but significant benefits in better service for D. C. Transit patrons, we conclude that WMA's proposed through bus service from the WMA service area to Farragut Square would serve the public convenience and necessity without adversely affecting D. C. Transit.

Having reached this determination, we must consider the issues raised by the provisions of Article XII § 4 (e) of the Compact. That section provides that before amending a certificate of convenience and necessity to authorize a route extension to operate over the routes of another carrier, the Commission must find that the service of the existing carrier is inadequate and must provide the existing carrier with reasonable time and opportunity to remedy the inadequacy. <sup>2/</sup>

We have already, in effect, resolved the first of these questions in our ruling that the public convenience and necessity requires through bus service for patrons in the WMA service area to and from the Farragut Square area of the District of Columbia. It is impossible, having heard the testimony of the public witnesses, and having considered the other evidence, such as WMA's survey, to conclude that transfer service to D. C. Transit buses at 11th Street and Pennsylvania Avenue, N. W., adequately meets the needs of WMA patrons.

The statistical evidence presented by D. C. Transit concerning its routes, schedules, and space availability simply does not meet the fact, amply demonstrated in this record, that the riding public demands and requires through bus service from origin to destination wherever possible. Not everyone can have through

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<sup>2/</sup> Article XII § 4 (g) contains language concerning remedying inadequacies identical to that set forth in § 4 (e). Since this proceeding concerns route extensions, we think that § 4 (e) is the more directly applicable provision. In any event, the procedures called for are identical.

service, of course; but where, as here, such service is economically and physically feasible, it best serves the requirements of public convenience and necessity.

This brings us to the question of remedying the inadequacy. It would perhaps be best to begin with a discussion of the nature and intent of this requirement. This leads, in turn, to consideration of the nature of D. C. Transit's operating rights in the District of Columbia. The concept which seems to underlie D. C. Transit's position in this proceeding is that D. C. Transit has been granted exclusive operating rights, i.e., a monopoly, on service within the District of Columbia. Any attempt by others to provide new or extended service within the District is regarded as an unwarranted infringement of D. C. Transit's rights. Is this the approach we should follow in considering the issues here? We think not. Examination of D. C. Transit's franchise, and of the Compact, demonstrates unequivocally that the controlling concept is not the exclusivity of D. C. Transit's operating rights, but the public interest or, to use an equivalent phrase, the public convenience and necessity. Section 3 of D. C. Transit's franchise did not prohibit transit operations by others in the District of Columbia. It required only that such operations first be found to be required by the public convenience and necessity. Similarly, the procedural requirements set forth in the Compact have as their fundamental basis the public convenience and necessity.

We do not regard it as our function, therefore, to protect D. C. Transit's operating rights at the expense of the welfare of the riding public. (We emphasize, in this connection, that we must take into account the entire riding public, including D. C. Transit's riders and those of other companies.) Rather, operating rights must be adjusted so that the controlling standard, that of public convenience and necessity, is satisfied.

It is in that light that we take up the question of remedying the inadequacy we have found to exist. The remedy cannot simply be any measure whatever which will correct the deficiency in service. It must be a remedy which meets the tests of the public interest; it must serve the public convenience and necessity.

D. C. Transit has been aware for some time of the possibility that we might find existing service inadequate because it does not provide through service from WMA's service area to Farragut Square. It has taken advantage of this knowledge to consider and propose remedies in case such an inadequacy is found to exist.

They have suggested in this proceeding two possible remedies. The first remedy lies in Applications 462 and 463, consolidated for purposes of hearing in this proceeding, in which D. C. Transit proposes new routes running from certain points in WMA's service area to Farragut Square. D. C. Transit took the position that the service outlined in its applications was not, in its view, required by the public convenience and necessity. It is clear, therefore, that the only context in which we need view these applications is as a remedy under Article XII, § 4 (e). We do not believe that this proposed remedy meets the test of public convenience and necessity. Indeed, we do not think that such a remedy was even contemplated under the Compact.

It must be noted that the provisions of Article XII, § 4 (e) of the Compact do not simply apply to route extensions over the routes of D. C. Transit. They apply to the routes of all carriers. Hence, when D. C. Transit proposes to operate over the routes of WMA both within the District, in the areas in which WMA is authorized to provide intra-District service, and in Prince George's County, the provisions of Section 4 (e) must be complied with in considering this proposal. Consider the situation this created. We find that existing service is inadequate in that riders in WMA's service area do not have through bus service to Farragut Square. If D. C. Transit's approach is accepted, we could not, on the one hand, allow WMA to provide through service without first permitting D. C. Transit to provide through service over WMA's routes. On the other hand, we could not allow D. C. Transit to operate over WMA's routes without first allowing WMA to provide the needed service. An impasse on remedying the inadequacy would exist if this theory were accepted. Obviously, the Compact did not contemplate that a solution to problems of this nature was to provide for complete duplication of routes when an extension is required on one end of a given set of routes. We conclude, therefore, that D. C. Transit's proposal to provide service to Farragut Square on new routes which deeply invade WMA's service area is not a "remedy" as contemplated by Section 4 (e) of the Compact.

We might add that we are reinforced in this conclusion when, putting aside the fact that the remedy in question is not even contemplated by the Compact, we test that remedy by the

standards of the public convenience and necessity. What is needed, we have found, is through service to Farragut Square for riders in WMA's service area. WMA can provide that through service by extending its routes about one mile in the downtown D. C. area. The only persons carried in this one mile extension would be persons originating in WMA's service area. We have considered the financial impact which this extension would have on D. C. Transit and its riders and have concluded that it would be minimal.

D. C. Transit would remedy the inadequacy by creating two entirely new routes. One would penetrate into WMA's territory 5.5 miles at its furthest point and the other would extend 2.1 miles. These extensions would be along main arteries running through heavily populated neighborhoods in the area close to the District line. WMA's routes run along these same arteries but branch more widely into the neighborhoods located nearby and extend much further into Prince George's County. The net effect of D. C. Transit's proposal, therefore, would be to "skim the cream" off WMA's route structure. WMA would be required to serve the furthest ends of its routes while facing competition on the close-in arterial portions thereof. The potential deleterious effects on overall standards of service are obvious.

WMA attempted to estimate the financial impact upon it of D. C. Transit's proposal. WMA Exhibit 28 purports to analyze the total revenue which D. C. Transit would require to cover the fully allocated cost of providing the service proposed in its application. The dollar figures were determined by multiplying the fully allocated cost per mile, as reported by D. C. Transit in its annual reports to this Commission, times the number of miles involved in the proposed operations. The exhibit indicates that the cost involved in the operation proposed by Application 462 (Route C2) would be \$276,805, and that the cost involved in Application 463 (Routes C2 and C4) would be \$433,357. These two figures are totalled and a 5.3 percent factor is added to supply a profit at the authorized rate of return, making a total cost estimated by WMA of \$748,084. In fact, totalling the costs for each application ignores the fact that D. C. Transit's applications are actually offered in the alternative. It is the figures applicable to each, rather than the total, which are pertinent.

D. C. Transit offered its Exhibits 31 and 32, in which it estimated the costs involved in these operations. These exhibits covered only out-of-pocket costs, and did not fully allocate all expenses, as did WMA. Hence, the figures submitted by D. C. Transit are lower than WMA's. Specifically, D. C. Transit estimated out-of-pocket costs of \$176,662 for Application 462 (Route C2) and \$236,772 for Application 463 (Routes C2 and C4). We think D. C. Transit's figures are low. First, they do not take into account the recent substantial wage increase granted under the terms of the existing labor contract. Moreover, we think that fully allocated cost, other than out-of-pocket cost, is more pertinent when considering the impact upon WMA.

We conclude, therefore, that if D. C. Transit were permitted to operate the full service it proposes, i.e., Routes C2 and C4, and if it were to recover its fully allocated costs from revenues produced by this operation, the revenues lost to WMA would exceed \$400,000. This would amount to around 8 per cent of WMA's present revenues and would undoubtedly have a substantial impact upon the company and upon both its rate structure and its level of service. This 8 per cent impact contrasts sharply with the fact that D. C. Transit's revenues have apparently been reduced by less than one tenth of one percent by WMA's route extension.

Finally, there is a substantial question, as brought out by the Commission staff, whether D. C. Transit could provide the service it proposes without adversely affecting its other services. D. C. Transit is presently missing scheduled runs because it lacks the men or equipment to perform them. We recognize that the cut runs are a small percentage of the schedule. Nonetheless, they occur in a regular pattern and with some frequency, thus raising the question whether D. C. Transit is capable of performing the new service it proposes. Moreover, we are aware of many other areas, already within D. C. Transit's service area, in which additional service would be desirable. We have an obligation to ensure that D. C. Transit is capable of meeting these demands before we could allow it to begin invading the service area of others.

We conclude, therefore, that if it were necessary to apply the test of public convenience and necessity to D. C.

Transit's suggested remedy of allowing it to provide the through service, we would have to conclude that the public interest would not be served thereby. Permitting D. C. Transit to operate as it proposes over the routes of WMA would have a deleterious effect on WMA's own service to points beyond D. C. Transit's proposed terminals. The financial impact upon WMA and its riders would be substantial and adverse. Permitting D. C. Transit to operate the service it proposes might have a substantial adverse effect upon its existing service in other areas. Further, assuming D. C. Transit did have the necessary resources to provide this service, we are not convinced that this would be the best way for it to apply those resources.

Having rejected a grant of D. C. Transit's applications as an acceptable remedy for the inadequacy we have found to exist, we can now take up the second remedy suggested by D. C. Transit. This is the possibility of an interline agreement. Again we emphasize at the outset that the mere proposal of this remedy does not mean that it must be accepted under the terms of Article XII, § 4 (e) of the Compact. Rather, we must test the remedy by the standard of public convenience and necessity and accept it only if it satisfies that standard.<sup>3/</sup> Our task is made easier here by the facts developed on the record concerning an interline agreement. We have previously noted that such an agreement presently exists albeit only for the period while this proceeding is in progress. Both WMA and D. C. Transit have indicated a willingness, however, to enter into an agreement for a longer period. They were unable to achieve an actual contract because their views on the termination arrangements for such an agreement differed. The existing agreement provides that WMA shall pay D. C. Transit 3.4 cents for each revenue mile operated by WMA in the extended service. The service presently involves 299.1 revenue miles each weekday (WMA Ex. No. 10),

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<sup>3/</sup> It is possible that in some situation the existing carrier would have no remedy to offer which would meet the necessary standard. In this situation, it is perfectly obvious that we would not be frustrated in remedying an inadequacy, or forced into adopting an unacceptable remedy. Rather, we could authorize a route extension by a new carrier without any action being taken by the existing carrier. Section 4 (e) specifically states that the time and opportunity for remedy are to be reasonable, not absolute.



calling for a daily liability of about \$10. Taking into account weekends and holidays, the annual cost to WMA of the agreement is about \$3,000. Both D. C. Transit and WMA were willing to continue this basis for computing the payment required.

We should first consider whether such an interline agreement can be considered a "remedy" within the meaning of Section 4 (e). We believe that it can. The inadequacy found to exist is the lack of through bus service. The Compact itself contemplates interline arrangements between carriers to provide "adequate transit service." Compact, Article XII, §7. This is a means available to a carrier to bring about through service and should be considered a possible "remedy" under Section 4 (e).

Next, we must consider whether the particular agreement involved here serves the public convenience and necessity. We believe that it does.<sup>4/</sup> The amount of compensation, and its method of computation, are reasonable. They are related to the level of service provided and have a reasonable relationship to the amount of revenue which D. C. Transit might experience in the absence of the interline service. The payment called for does not impose a burden on WMA or upon its riders. It will not constitute a deterrent to the growth of the through service in question nor to the institution of other service improvements.

The only obstacle to agreement between the parties without the intervention of the Commission was the question of termination of the contract. WMA wished to have a permanent non-cancellable

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<sup>4/</sup> The fact that the interline agreement is an appropriate remedy in the case presently before us does not necessarily mean that this is the automatic solution in every set of circumstances. For example, the shift of a route for a few blocks, whether or not it coincides with routes already being run by another carrier, might well have no significant impact on the operations of the existing carrier and hence not require the interline agreement technique. A case in point is the route authorization granted to A. B. & W. into the Southwest employment area by Order No. 816 and Route Authorization No. 1 - 68 on May 10, 1968. The remedy in any given case must be judged in the light of the circumstances of that case.

agreement while D. C. Transit wished to have the right to cancel upon a given period of notice. We will resolve this dispute by directing that the agreement shall continue in effect indefinitely with no change permitted therein except upon express approval by this Commission. This action by us has its basis, first, in our obligation to require that any remedy permitted under Section 4 (e) serves the public convenience and necessity. We find that the present agreement does but we must scrutinize any change therein to ensure that the public interest continues to be served. Hence, no change could be made without prior approval. We are further empowered to maintain continuing jurisdiction over this interline agreement by the provisions of Article XII, § 7 of the Compact, which gives us broad powers over the terms and conditions of such agreements.

With this determination, our consideration of the issues in this proceeding is complete. WMA seeks authority to extend its routes from 11th and Pennsylvania Avenue, N. W., to Farragut Square. The applicant is fit, willing, and able to provide the service. The service is required by the public convenience and necessity. The alternative service to Farragut Square by transferring to D. C. Transit at 11th Street and Pennsylvania Avenue, is inadequate to the requirements of the public convenience and necessity. D. C. Transit's proposal to remedy this inadequacy by providing the service encompassed by its Applications 462 and 463 is not a "remedy" within the meaning of Article XII, § 4 (e) of the Compact. Moreover, even if it were a remedy, this proposal would not serve the public convenience and necessity. D. C. Transit's proposal to remedy the inadequacy by entering into an interline agreement on the terms and conditions discussed above is a remedy which serves the public convenience and necessity.

THEREFORE, IT IS ORDERED:

1. That Application No. 425, filed by WMA Transit Company, be, and it is hereby granted, on condition that WMA Transit Company comply with paragraph 2 of this order.

2. That WMA Transit Company and D. C. Transit System, Inc., shall enter into an interline agreement in the form set forth in D. C. Transit Exhibit No. 21 in this proceeding except that the words

"....continuing until final determination by the Washington Metropolitan Area Transit Commission of WMA's application for a Certificate of Public Convenience and Necessity to extend its service from its present terminal at Pennsylvania Avenue and 11th Street, N.W. over routes presently served by D. C. Transit to Farragut Square Area (hereinafter referred to as the 'extended service'),"

shall be stricken and the following words substituted:

"continuing until a change in this agreement is approved by order of the Washington Metropolitan Area Transit Commission".

3. That Applications Nos. 462 and 463, filed by D. C. Transit System, Inc., be, and they are hereby, denied.

BY THE COMMISSION:



GEORGE A. AVERY  
Chairman